

Introduced by Senator CorreaFebruary 12, 2010

An act to amend Section 667.6 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

SB 1037, as introduced, Correa. Sex offenses: penalty enhancements.

Existing law, as amended by Proposition 83, adopted November 7, 2006, allows for the imposition of a discretionary full, separate, and consecutive sentence term for each violation of specified sex crimes if the crimes involve the same victim on the same occasion. The initiative provides that any amendment of this provision by the Legislature shall require a $\frac{2}{3}$ vote of the membership of each house unless the Legislature amends the provision to expand the scope of its application or to increase the punishments or penalties provided, in which case the Legislature may amend this provision by a statute passed by a majority vote of each house.

This bill would permit the imposition of a discretionary full, separate, and consecutive sentence term for each violation of those specified sex crimes without the requirement that the crimes involve the same victim on the same occasion.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 667.6 of the Penal Code is amended to
2 read:

1 667.6. (a) Any person who is convicted of an offense specified
2 in subdivision (e) and who has been convicted previously of any
3 of those offenses shall receive a five-year enhancement for each
4 of those prior convictions.

5 (b) Any person who is convicted of an offense specified in
6 subdivision (e) and who has served two or more prior prison terms
7 as defined in Section 667.5 for any of those offenses shall receive
8 a 10-year enhancement for each of those prior terms.

9 (c) In lieu of the term provided in Section 1170.1, a full,
10 separate, and consecutive term may be imposed for each violation
11 of an offense specified in subdivision (e) ~~if the crimes involve the~~
12 ~~same victim on the same occasion~~. A term may be imposed
13 consecutively pursuant to this subdivision if a person is convicted
14 of at least one offense specified in subdivision (e). If the term is
15 imposed consecutively pursuant to this subdivision, it shall be
16 served consecutively to any other term of imprisonment, and shall
17 commence from the time the person otherwise would have been
18 released from imprisonment. The term shall not be included in any
19 determination pursuant to Section 1170.1. Any other term imposed
20 subsequent to that term shall not be merged therein but shall
21 commence at the time the person otherwise would have been
22 released from prison.

23 (d) A full, separate, and consecutive term shall be imposed for
24 each violation of an offense specified in subdivision (e) if the
25 crimes involve separate victims or involve the same victim on
26 separate occasions.

27 In determining whether crimes against a single victim were
28 committed on separate occasions under this subdivision, the court
29 shall consider whether, between the commission of one sex crime
30 and another, the defendant had a reasonable opportunity to reflect
31 upon his or her actions and nevertheless resumed sexually
32 assaultive behavior. Neither the duration of time between crimes,
33 nor whether or not the defendant lost or abandoned his or her
34 opportunity to attack, shall be, in and of itself, determinative on
35 the issue of whether the crimes in question occurred on separate
36 occasions.

37 The term shall be served consecutively to any other term of
38 imprisonment and shall commence from the time the person
39 otherwise would have been released from imprisonment. The term
40 shall not be included in any determination pursuant to Section

1170.1. Any other term imposed subsequent to that term shall not be merged therein but shall commence at the time the person otherwise would have been released from prison.

(e) This section shall apply to the following offenses:

(1) Rape, in violation of paragraph (2), (3), (6), or (7) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1), (4), or (5) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 286.

(5) Lewd or lascivious act, in violation of subdivision (b) of Section 288.

(6) Continuous sexual abuse of a child, in violation of Section 288.5.

(7) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d) or (k), of Section 288a.

(8) Sexual penetration, in violation of subdivision (a) or (g) of Section 289.

(9) As a present offense under subdivision (c) or (d), assault with intent to commit a specified sexual offense, in violation of Section 220.

(10) As a prior conviction under subdivision (a) or (b), an offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(f) In addition to any enhancement imposed pursuant to subdivision (a) or (b), the court may also impose a fine not to exceed twenty thousand dollars (\$20,000) for anyone sentenced under those provisions. The fine imposed and collected pursuant to this subdivision shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs established pursuant to Section 13837. If the court orders a fine to be imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into

- 1 the general fund of the county treasury for the use and benefit of
- 2 the county.

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